

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Kyowa America Corporation

Respondent

371 East Roy Furman Highway
Waynesburg, Pennsylvania 15370

Facility.

:
: Docket No. EPCRA-03-2005-0031

:
: **CONSENT AGREEMENT**

:
: Proceeding under
: under EPCRA §§ 313 and
: 325, 42 U.S.C. §§ 11023
: and 11045

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III ("Complainant") and Kyowa America Corporation ("Respondent"), pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

Complainant and Respondent enter into this Consent Agreement to resolve potential violations disclosed by Respondent at its facility, located at 317 East Roy Furman Highway, Waynesburg, Pennsylvania. The potential violations which are the subject of this Consent Agreement were voluntarily disclosed by Respondent to the Complainant by letter dated July 8, 2003.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules, this Consent Agreement and attached Final Order ("CA/FO") resolve Respondent's violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder concerning Respondent's obligation to submit toxic chemical release forms for a specific toxic chemical to the Environmental Protection Agency and the Commonwealth of Pennsylvania for the reporting years 2001 and 2002 for its facility located at 317 East Roy Furman Highway, Waynesburg,

Pennsylvania ("Facility").

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA/FO.
3. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CA/FO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA/FO or to appeal this CA/FO.
5. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CA/FO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CA/FO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this CA/FO, Respondent certifies that the Facility covered by this CA/FO is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.
10. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, for the specific violations alleged herein and as more fully set forth in Paragraph 16 of this CA/FO. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, Complainant reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CA/FO

following

entry of this CA/FO. In addition, this settlement is subject to all limitations on the

scope of resolution and to reservation of rights set forth in Section 22.18(c) of the Consolidated Rule.

12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
13. The undersigned representative of Respondent certifies that he is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
14. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
15. The effective date of this CA/FO is the date upon which the CA/FO, after signature by the Regional Administrator of EPA-Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.

COUNTS I - II

- a. Section 313 of EPCRA, 42 U.S.C. § 11023, requires the owner or operator of a facility that: 1) has 10 or more employees; 2) is in a primary Standard Industrial Classification ("SIC") Code 20 through 39 (as in effect on July 1, 1985); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65 in excess of the threshold quantity established in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or alternate threshold report

("Form A") for each toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- b. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site that are owned or operated by the same person.
- c. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
- d. Respondent Kyowa America Corporation, is a Georgia corporation which does business in Pennsylvania.
- e. Respondent is, and was at all times relevant to this CA/FO, a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11023.
- f. Respondent owned and operated a plastic parts manufacturing facility on 317 East Roy Furman Highway, Waynesburg, Pennsylvania at the time of the violations alleged herein.
- g. Respondent had 10 or more full-time employees at the Facility during the period of violations alleged herein.
- h. At the time of the violations alleged herein, Respondent's Facility had a primary SIC Code of 30 (3089).
- i. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed or used at the Facility in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form was required, to EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year.
- j. "Certain glycol ethers" are grouped as a chemical category in 40 C.F.R. § 372.65 and are "toxic chemicals" as defined by 40 C.F.R. § 372.3.
- k. The threshold quantity for a toxic chemical which is used at a facility is 10,000 pounds for the calendar years at issue in this CA/FO as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A).
- l. Respondent used more than 10,000 pounds of glycol ethers

identified in 40 C.F.R. § 372.65 during calendar years 2001 and 2002.

- m. Respondent failed to submit the required Form R or Form A for the toxic chemical category identified in 40 C.F.R. § 372.65 as "certain glycol ethers" to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1, 2002 for the 2001 calendar year.
- n. Respondent failed to submit the required Form R or Form A for the toxic chemical category identified in 40 C.F.R. § 372.65 as "certain glycol ethers" to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1, 2003 for the 2002 calendar year.
- o. Respondent's failure to submit the required Form Rs or Form As to the Administrator of EPA and the Commonwealth of Pennsylvania as set forth above in subparagraphs (m) and (n) constitutes two separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023.
- p. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) provides that any person who violates Section 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation.
- q. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised at 69 Fed. Reg. 7121 (February 13, 2004), violations occurring after January 30, 1997 and before May 16, 2004 are subject to an increased statutory maximum penalty of \$27,500 per violation.

Civil Penalty

- 17. In settlement of the violations alleged in this CA/FO, Respondent agrees to pay a civil penalty of Fourteen Thousand Nine Hundred and Sixty Dollars (\$14,960) in full satisfaction of all claims for civil penalties for the violations alleged in Paragraph 16 of the CA/FO. Such civil penalty shall become due and payable immediately upon Respondents receipt of a true and correct copy of the CA/FO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, as described in Paragraph 20, below, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CA/FO is mailed or hand-delivered to Respondent.
- 18. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory

factors set forth in Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), concerning the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and other factors as justice may require, and is consistent with the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act ("ERP"), dated August 10, 1992.

19. Respondent shall remit the full penalty in accordance with Paragraph 17 above, by submitting a certified or cashier's check payable to the Order of "Treasurer, United States of America," to:

U.S. EPA Region III
P.O. Box 360515
Pittsburgh, PA 15251-6515

Overnight deliveries shall be sent to:

Mellon Client Service Center
500 Ross Street, Room 670
Pittsburgh, PA 15262-0001
ATTENTION: EPA Region III, P.O. Box 360515

For EFT (electronic wire transfers):

Mellon Bank
Pittsburgh, PA
ABA No. 043000261
credit EPA account number 9108552, lockbox 360515

Such payment shall reference Respondent's name and address as well as the EPA Docket Number of this CA/FO (Docket No. EPCRA-03-2005-0031). Notice of payment, including a copy of the check, shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Eugenia Beale
Paralegal Specialist(3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

20.

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent Kyowa America Corporation. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.


A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

21.

Failure by Respondent to comply with the requirements of this CA/FO may subject Respondent to additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 325 of EPCRA, 42 U.S.C. § 11045, or the accompanying Final Order.

For Respondent

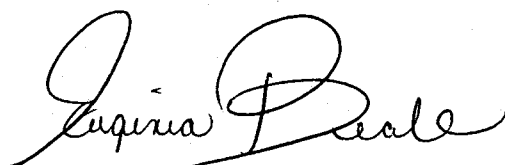
12-15-04
Date



Kazuhiko Hada
President -Electronics Division
Kyowa America Corporation

For Complainant

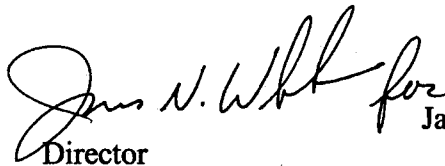
December 29, 2004
Date



Eugenia Beale
Paralegal Specialist
Waste and Chemical Law Branch

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Waste and Chemicals Management Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

December 29, 2004
Date



James J. Burke
Director
Waste and Chemicals Management Division

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1650 Arch Street
Philadelphia, PA 19103-2029

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: **FINAL ORDER**

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FINAL ORDER

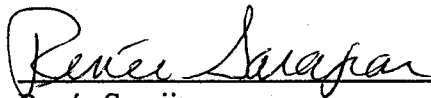
Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Kyowa America Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), which authorizes the assessment of a civil penalty for violations of EPCRA, and the *Consolidated Rules of Practice*, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement was based on a consideration of factors set forth in EPCRA § 325, IT IS HEREBY ORDERED that Respondent comply with the terms and

conditions of the attached Consent Agreement and to pay a civil penalty of Fourteen Thousand Nine Hundred and Sixty Dollars (\$14,960). Payment shall be made in the manner set forth in Paragraph 19 of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: Dec 30, 2004


Renée Sarajian
Regional Judicial Officer
U.S. EPA - Region III